

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRUCE L. WAPLES,

Defendant Below-
Appellant,

v.

STATE OF DELAWARE,

Plaintiff Below-
Appellee.

§

§ No. 33, 2009

§

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§ Court Below—Superior Court

§ of the State of Delaware

§ in and for Sussex County

§ Cr. ID No. 0602003409

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Submitted: February 23, 2009

Decided: March 16, 2009

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 16th day of March 2009, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Bruce L. Waples, filed an appeal from the Superior Court's December 16, 2008 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) The record reflects that, in February 2006, Waples was arrested on drug-related charges. He subsequently was held at Sussex Correctional Institute ("SCI") pending trial. On April 17, 2006, Waples entered a plea of guilty to charges of Possession of Cocaine, Possession of Drug Paraphernalia, and Criminal Trespass and was immediately sentenced. On the drug possession conviction, Waples was sentenced to 1 year incarceration at Level V, with credit for 72 days served,² to be suspended for 1 year at Level III probation. On the conviction of possession of drug paraphernalia, he was sentenced to 1 year incarceration at Level V, to be suspended for 1 year at Level III probation. On the criminal trespass conviction, he was sentenced to 30 days incarceration at Level V, to be suspended for 1 year at Level III probation.

(3) By June 21, 2006, Waples had committed a violation of probation ("VOP") and had been charged with new offenses. He was in custody between June 21 and June 30, 2006, when his VOP hearing took place. At the June 30, 2006 VOP hearing, Waples received a VOP sentence

¹ Supr. Ct. R. 25(a).

² It appears that the 72-day credit represents time served at SCI pending trial.

of 1 year at Level V, with credit for 82 days served,³ to be suspended for 6 months at Level IV VOP Center, on the drug possession conviction. He received 1 year at Level V, to be suspended for 6 months at Level IV VOP Center on the possession of drug paraphernalia conviction. Finally, he was discharged as unimproved on the criminal trespass conviction.

(4) On October 30, 2006, while in custody at the VOP Center, Waples assaulted a corrections officer. Subsequently, he was found guilty by a Superior Court jury of Assault in a Detention Facility and was sentenced to 4 years incarceration at Level V, with credit for 122 days served,⁴ to be suspended after 2 years for 1 year at Level III probation. Waples' conviction and sentence were affirmed by this Court on direct appeal.⁵

(5) On March 16, 2007, another VOP hearing was held. Waples was discharged as unimproved on the drug possession conviction and was sentenced on the possession of drug paraphernalia conviction to 1 year at Level V, to be suspended for 6 months at Level IV VOP Center. It is from that VOP sentencing order that Waples now appeals.

³ It appears that the additional 10-day credit represents time served at SCI pending the VOP hearing.

⁴ It appears that the 122-day credit represents time served at SCI between the offense and trial.

⁵ *Waples v. State*, Del. Supr., Nos. 122/163, 2007, Holland, J. (Mar. 3, 2008).

(6) In his appeal, Waples claims that his March 16, 2007 VOP sentence on his drug paraphernalia possession conviction is illegal under Rule 35(a) because it does not include the credit for 82 days served that originally was applied to his drug possession conviction, a sentence that has since been discharged.

(7) Rule 35(a) permits the Superior Court to correct an illegal sentence “at any time.” Relief under Rule 35(a) is available when the sentence imposed exceeds the statutorily-authorized limits or violates double jeopardy.⁶ A sentence also is illegal when it is ambiguous with respect to the time and manner in which it is to be served, is internally contradictory, omits a term required to be imposed by statute, is uncertain as to its substance, or is a sentence that the judgment of conviction did not authorize.⁷ The narrow function of Rule 35(a) is to correct an illegal sentence, not to re-examine alleged errors occurring prior to the imposition of sentence.⁸

(8) Waples’ VOP sentence on his drug paraphernalia possession conviction is within the statutory maximum and, therefore, is not illegal.⁹ Nor does Waples allege any illegality with respect to the terms of his

⁶ *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

⁷ *Id.*

⁸ *Id.*

⁹ Del. Code Ann. tit. 11, § 4206(a); Del. Code Ann. tit. 16, §§ 4771 and 4774(a); *Ward v. State*, 567 A.2d 1296, 1297 (Del. 1989).

sentence. His claim is no more than an assertion that he is entitled to more credit time than he has received. Credit for time served is not an appropriate basis for relief under the narrow function of Rule 35(a).¹⁰ Because Waples is not entitled to relief under Rule 35(a), we conclude that the Superior Court's denial of Waples' Rule 35(a) motion must be affirmed.

(9) It is manifest on the face of the opening brief that the appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

¹⁰ *Fisher v. State*, Del. Supr., No. 254, 2008, Berger, J. (Sept. 16, 2008) (citing *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998)).